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May 4, 2007

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2007-3 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by strikeout and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Monday, June 4, 2007**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

Board of Equalization  
County-Assessed Properties Division  
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" ([www.boe.ca.gov/proptaxes/annocont.htm](http://www.boe.ca.gov/proptaxes/annocont.htm)). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at [www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm). Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/Lynn Bartolo for

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2007-3

May 4, 2007

### 220.0000 CHANGE IN OWNERSHIP

[220.0004 After-Acquired Title Doctrine.](#) The doctrine of after-acquired title applies in some circumstances where the deed purports to convey a greater title or estate in property than is actually owned by the grantor. When such a deed is recorded, only the interest actually owned undergoes a change in ownership and is subject to reassessment, unless an exclusion applies. C 11/7/2006.

[220.0372.015 Life Estate.](#) A life estate interest may be terminated by the life tenant during his lifetime. However, when a life estate is transferred to the owner of the remainder interest in a property, the life estate ceases to exist and is merged into the remainder interest. The doctrine of merger stands for the proposition that whenever a greater estate (remainder fee interests) and a lesser estate (life estate) in the same parcel of real property are held by the same person, without an intermediate interest or estate, the lesser estate generally merges into the greater estate and is terminated.

Upon the grandmother's death, an irrevocable generation-skipping transfer trust was created for the lifetime benefit of grandfather. Upon grandfather's death, their son became the lifetime beneficiary of the trust, with a remainder interest in the son's child. The trust owns White Acre. Child owns Black Acre. Trust wants to transfer White Acre to Child in exchange for Black Acre.

If Son, the present beneficiary of the trust, transfers his life estate interest in White Acre to child, the owner of the remainder interest, this transfer would terminate the son's life estate interest and cause it to merge into Child's remainder interest. Child's remainder interest in White Acre would become a vested present beneficial ownership interest that Child will have received from his parent, not the trustor (grandmother). This transfer may be excluded from change in ownership as a parent-child transfer, provided the other requirements set forth in Revenue and Taxation Code section 63.1 are met. Similarly, the transfer of Black Acre from child to a trust in which parent is the beneficial owner may be excluded from change in ownership as a parent-child transfer. C 11/7/2006.

[220.0376 Limited Liability Company.](#) An irrevocable trust that has three equal, individual present beneficiaries holds title to real property. The trust forms a limited liability company (LLC) and contributes cash to the LLC in exchange for a 100 percent membership interest in the LLC. The trust then forms a limited partnership and contributes the real property owned by the trust to the partnership in exchange for a 99 percent limited partnership interest. The LLC contributes cash to the partnership in exchange for a 1 percent general partnership interest.

For change in ownership purposes, the present beneficiary of an irrevocable trust is considered to be the owner of the present beneficial interest in property held by the trust. Before the transfer, three beneficiaries each owned a one-third interest in the Trust property. After the transfer, each beneficiary will own a one-third interest in the property as a result of

their respective one-third interest in the partnership and their one-third membership interest in the LLC. Therefore, the transfer of the trust property to the partnership is proportional and excluded from reassessment pursuant to Revenue and Taxation Code section 62(a)(2). C 11/7/2006.

[220.0560](#) Preliminary Change of Ownership Report. ~~Use of such reports by county recorders to compute the required documentary transfer tax does not violate Revenue and Taxation Code section 481, which does not appear to apply to such reports and which does not apply to county recorders. LTA 3/8/85 (No. 85/37).~~

*Delete – Section 481 was subsequently amended to specifically provide that information included in either the preliminary change in ownership report or the change in ownership statement is to be held secret by those authorized by law to receive or to have access to that information.*

[220.0823](#) Trusts—Successor Trustee. When a trustor-trustee becomes incapacitated and another person succeeds as successor trustee, no change in ownership occurs as long as the trustor remains the present beneficiary of the trust. For change in ownership purposes, it is necessary to look through the trust to determine the parties between whom a transfer is taking place. If there is no transfer of the beneficial interest, then no change in ownership occurs. C 11/15/2006.

### **370.0000 DOCUMENTARY TRANSFER TAX ACT**

[370.0010](#) Preliminary Change Of Ownership Report. ~~Use of such reports by county recorders to compute the required documentary transfer tax does not violate Revenue and Taxation Code section 481, which does not appear to apply to such reports and which does not apply to county recorders. LTA 3/8/85 (No. 85/37).~~

*Delete – Section 481 was subsequently amended to specifically provide that information included in either the preliminary change in ownership report or the change in ownership statement is to be held secret by those authorized by law to receive or to have access to that information.*